

Opinion of the United States District Court for the Middle District of Pennsylvania

James H. Williams  
(Plaintiff)

vs  
Richard L. Spade  
(Defendant)

Civil No<sup>#</sup> 11cv-01-0280

Judge Heene

FILED  
HARRISBURG, PA

MAR 21 2005

MARY E. D'ANDREA, CLERK  
Per LCN  
Deputy Clerk

Plaintiff's concise brief in support of motion  
for reconsideration

Statement of the case

This is a pro se inmate's civil rights action brought pursuant to 42 U.S.C. § 1983. By James H. Williams #Y-8692 ("Plaintiff") is an inmate currently housed at the State Correctional Institution ("SCI") Greene. The allegations in Plaintiff's complaint arose during the time Plaintiff was housed at SCI Mifflin.

Plaintiff's complaint alleged that Capt. Martin Dragoonick, Major James McGrady and Unit Manager Richard Spade ("Defendants") conspired against him in violation of his Eighth and Fourteenth Amendment Rights. Plaintiff requested compensatory, punitive and actual award of nominal damages in Plaintiff's opposition brief to defendants motion for summary judgment, as well as court costs and filing fees. Plaintiff also requested that the court discipline Defendants for their action and/or inaction and direct Defendants to remove misconduct from his files.

Defendants filed a motion to dismiss on September 21, 2001 and a brief in support of that motion on October 3, 2001. By order dated January 4, 2002, the court directed Plaintiff to file a brief in opposition to the motion to dismiss within twenty (20) days of the order. Defendants were served with Plaintiff's brief in opposition to the motion to dismiss on January 22, 2002.

On October 10, 2002, the Court issued an order granting in part and denying in part Defendants motion to Dismiss.

The Court granted the motion as to Defendants Dragovich and McGrady pursuant to Pa's two year statute of limitations. Time barred claims consist of being deliberate indifference towards Plaintiff's safety and health, exposure to environment tobacco smoke ("ETS") Memorandum and order dated October 10, 2002 pg\* 6-7.

Plaintiff's filed motion for reconsideration on October 18, 2002 and a brief in support of that motion on November 1, 2002.

Defendant filed brief in opposition to Plaintiff's motion for reconsideration on November 12, 2002.

On June 17, 2003, the court denied Plaintiff's motion.

Plaintiff's filed an Appeal with Third Circuit on June 19, 2003 thereafter Third Circuit C.A. # 03-2823, dismissed Appeal for lack of Appellate jurisdiction on April 21, 2004.

Thereafter, Plaintiff's requested for admissions, set of interrogatories and production of documents. Defendants responded in part.

The only remaining Defendant is Spade who filed Motion for Summary judgment on July 22, 2004 and brief in support of that motion same day. By order dated September 30, 2004, directing Plaintiff's to file a brief in opposition to Defendants motion for Summary judgment and statement of material facts with brief in support within 15 days of order. After multiple enlargement of time by Plaintiff's on December 13, 2004, he filed statement of material facts and brief in opposition to summary judgment.

This Court issued a Memorandum and order dated February 28, 2005, granting Defendants Spade summary judgment.

Plaintiff's filed motion for reconsideration on March 7, 2005 and files concise brief in support of that motion.

### Statement of Facts

Defendants Spade motion for Summary judgment should not have been granted as a matter of law, on the grounds:

1. Plaintiff's failure to exhaust administrative remedies from February 3, 1999 Assault incident with defendant Spade.

2. Plaintiff's brief in opposition to Defendants motion for summary judgment dated December 13, 2004 pg's 19 thru 29, with attached supporting documents Exhibit "G thru J" does supports exhaustion of

administrative remedies and/or Plaintiff's established he exercised due diligent in exhausting such remedies.

3. contrary to Court memorandum and order dated Feb 28, 05 pg# 3-5 which concluded Plaintiff's exhaustion claims is listed on pages 19 thru 21 only with supporting Exhibit "G" only. results in clear error of law and manifest injustice.

4. Plaintiff's Exhibits does not stop at Exhibit "G" and pg's 19 thru 21 in brief on exhaustion claims therefore, reconsideration is in order.

### Question Presented

I. whether the Court should reconsider its order granting Defendants' ~~spindle~~ summary judgment.

(A) whether the Court abused its discretion when it fail to address Plaintiff's Exhaustion claims in its entirety from pg# 19 thru 29, with supporting Exhibits 'G' thru 'J' in brief, and;

(B) fail to address whether Department of Correction have established an additional complaint procedures DC 2001 004 "Criminal violation" and DC 2001-001 "Inmate abuse allegation monitoring" for inmates to file complaints against staff for exhaustion of administrative remedies as Plaintiff's argued in brief.

(C) whether the Court Erred by addressing health issue (exposure to environment ~~to~~ tobacco smoke ("ETS") when Defendants and Plaintiff's argued in summary judgment brief.

### Argument

Plaintiff's motion for reconsideration should be granted.

Plaintiff ask that this Court reconsider its memorandum and order dated February 28, 2005, granting Defendants' ~~spindle~~ summary judgment. failure to exhaust

### Reconsideration Standard

A motion for reconsideration is a device of limited utility. It may be used only to seek remediation of manifest errors of law.

OR fact, or to present newly discovered precedent or evidence which, if discovered previously, might have affected the Court's decision Hargco Corp. vs Zlotnicki, 779 F.2d 906 (3d Cir. 1985), cert. denied, 476 U.S. 1171 (1986).

It has also been held that a motion for reconsideration is appropriate in instances such as where the court has "misunderstood a party, or has made a decision outside the adversarial issues presented to the court by parties, or has made an error not of reasoning, but of apprehension." See Rohrbach vs AT&T Nassau Metals Corp., 902 F. Supp. 523, 527 (M.D. Pa. 1995), vacated in part on other grounds on reconsideration, 915 F. Supp. 712 (M.D. Pa. 1996) (quoting above the Belt, Inc. vs Mel Bohannon Roofing Inc. 99 F.R.D. 99, 101 (E.D. Va. 1983)).

The Federal Rules allow a party to move to alter or amend a judgment within ten (10) days of its entry. Fed. R. Civ. P. 59(e). Reconsideration of judgment is an extraordinary remedy; therefore, such motions are to be granted sparingly.

AL Industries vs Commercial States, 765 F. Supp. 513 (D.N.J. 1996) (citing Maldonado vs Bucca, 636 F. Supp. 621, 630 (D.N.J. 1986))

### Manifest Error of Law

A. Failure of the court to consider Plaintiff's exhaustion claim in its entirety, from pages 14 thru 29, with Exhibits A thru J

the Court evaluation and determination of exhaustion claim was solely based on D.O.C. Grievance System DC ADM 804

(See ~~Amended~~ Memorandum and order dated Feb. 28, 85 pg# 4-5)

The Court abused its discretion when it failed to give full consideration to the substantial evidence Plaintiff put forth in support of exhausting administration remedies.

The United States Supreme Court held in:

Haines vs Harner 404 U.S. 519, 92 F.2d 584, 30 L.Ed.2d 652 (1972)

(holding that a pro se litigant's papers are to be read with appropriate benevolence, however inartfully they are pleaded at 520)

Allegations of pro se complaints are held to less stringent standards than formal pleading drafted by lawyers at 521. Reaff'd Hughes vs Roche 449 U.S. 5, 4-10, 101 F.2d 173, 66 L.Ed.2d 163 (1980)

Plaintiff's argued in brief, the Dept of Corrections have established an additional procedures which inmate can file complaints against staff outside of inmate Grievance system DC ADM 804 (see Plaintiff's brief dated December 13, 2004 page # 21 thru 29)

In support of Plaintiff's allegation, he attached documentation in brief, Criminal violations DC ADM 004, Exhibit "H" and Inmate Abuse Allegation Monitoring DC ADM 001 Exhibit "I" (see Plaintiff's brief dated 12-13-04, Exhibits "H and I")

In accordance with Prison Litigation Reform Act ("PLRA") the relevant provision provides that;

No action shall be brought with respect to prison conditions under section 1983 etc, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997 e(A) see also Porter vs Russell, 534 U.S. 516 (2002) and Booth vs Churner, 532 U.S. 731 (2001)

Plaintiff's argument was one of the procedures that was available for administrative remedies which he exhausted was policy DC ADM 001. The Dept of Corrections maintains an Inmate Abuse Allegation Monitoring System which permits an inmate to file complaints the Dept has adopted DC ADM 001. IV Definitions.

#### A) Abuse;

1) Conduct that is prohibited either by law or by Dept policy such conduct involves:

(A) the use of excessive force upon an inmate page #1.

#### V Procedures

2) Reporting of Inmate Abuse Allegations by all persons committed to the custody of the Department.

1). Any inmate who is the victim of an abuse may report the abuse in the following manner.

A. filing an inmate grievance in accordance with Dept policy DC ADM 804, "Inmate Grievance System".

b. Reporting it in writing, or verbally to any staff member; or

c. Reporting it in writing to the office of Professional Responsibility of the Dept of Corrections.

2. Abuse allegations received by other central office employees shall be referred to the office of professional responsibility. page 3-4. (see Plaintiff's brief dated 12-13-04 page's 22 thru 25)

concerning February 8, 1999 incident involving Defendant's spouse assault. Plaintiff's filed letter of complaint against Defendant at S.C.E. Mahaney with District Attorney office and D.C. State Police both Depts forwarded letter of complaint to office of Professional Responsibility (OPR) (See Plaintiff's brief 12-13-04 page 25-26 and Exhibits J page 1 & 2)

Both documentation clearly shows Plaintiff's complaints was forwarded to OPR for investigation and review pursuant to D.O.C. Policy DC ADM-001 Inmate Abuse Allegation, although Plaintiff's did not file complaint directly with OPR, nevertheless, OPR received Plaintiff's complaint filed against Defendant spouse.

As to the fact Defendant's spouse constantly denying Plaintiff's never filed complaint against him and that no investigation was conducted from Feb 8, 99 assault incident.

On July 13, 2004 Plaintiff's contacted Clifford O'Hara, Director of Special Investigation "OPR" inquiring whether his office rec'd complaint filed against spouse at Mahaney, if so, what was the out-come of this investigation? Plaintiff's concluded in letter, Mahaney staff claims your office never made any investigation on the matter or have any knowledge of my complaint.

On July 20, 2004 Major Anthony W. Russ from "OPR" responded, stating, your complaint "was" previously investigated by S.C.E. Mahaney Staff, you need to contact S.C.E. Mahaney for any further information.

(See Plaintiff's brief 12-13-04 page 27-28 and Exhibits J page 3 thru 8)

For unknown reason as Plaintiff's alleged in brief and Court never addressed, "OPR" and S.C.E. Mahaney staff decline to forward Plaintiff's a copy of their investigation, in order for Plaintiff's to establish he filed such complaint against Defendant's spouse contrary to Defendant's statements no such complaint was filed. D.O.C. is in violation of their own rules and regulations pursuant to DC ADM-001 "Criminal Violation. VI Procedures A. Criminal Complaints by Inmates. Subsection 5 Inmate contact with District Attorney.

A) If after investigation of an inmate complaint by PSP or facility authorities, it is determined that a prosecution will not be instituted by either the PSP or the facility authorities.

The inmate complainant "shall" be notified in accordance with established facility procedure of;

(1) the determination not to prosecute;  
(2) the reasons for the determination; and  
(3) of his/her right to communicate with the District Attorney to investigate the complaint further.

Therefore, Plaintiffs have submitted documentation in brief dated December 13, 2004 to support his claim he exercised due diligent of exhausting his administrative remedies, and if this Court conclude otherwise Plaintiffs argument would be, "To the extent if his claims were not fairly prosecuted through the various levels of the complaint procedures his effort to so exhaust his administrative remedies were frustrated by prison officials not following their own procedures and policy which Plaintiffs has no control over. Raised in Plaintiffs brief page 27 thru 29 which this court never addressed.

Plaintiffs contend that "the Courts decision to grant Defendants Spade motion for Summary Judgment on the grounds Plaintiffs failure to exhaust administrative remedies constitutes a manifest error of law which will result in manifest injustice to Plaintiffs Due process rights not addressing Plaintiffs brief filed December 13, 2004 in opposition to motion for summary judgment filed by Defendants Spade, pages 19 thru 29 with attached Exhibits in its entirety. This court excluded evidence Exhibits H thru J and brief pages 21 thru 29 for unknown reasons. Support Plaintiffs claims.

Question presented in section (B) whether the court abused its discretion when it fail to address whether Dept of Correction have established an additional complaint procedures DC-ADM-004 and DC-ADM001 etc, are interfere with (A) whether the court abused its discretion when it fail to address Plaintiffs exhaustion claims in its entirety etc.

c. the court ERRED by address Plaintiffs health issue (exposure to environment tobacco smoke ("ETS"))

Plaintiffs contend the court erred when it made a decision outside of the adversarial issues, presented to the court by parties. Defendants filed Brief in support of Motion for summary judgment when he alleged in Question presented (A) whether even if Plaintiffs allegations are believed, an "elbow" to Plaintiffs by Defendant Spade does not rise to the level of a violation of Plaintiffs Eighth Amendment Rights?

B) whether the undisputed evidence indicates that Defendants Spade did not assault Plaintiff's and  
 C) whether Plaintiff's failed to exhaust his administrative remedies with respect to the alleged "slowing" by Defendant Spade?

which Plaintiff's responded to above issues only. none of the party addressed environment tobacco smoke ("ETS") because by Memorandum and order dated October 10, 2002 this Court concluded Plaintiff's alleges that he was exposed to tobacco smoke in violation of prison regulations putting Plaintiff's health at risk. etc. the incidents surrounding the tobacco smoke occurred in the fall of 1998. etc. Plaintiff's therefore knew or had reason to know of Defendant's alleged disregard for his health on or before December 7, 1998. Plaintiff's did not file his action until February 13, 2001, over two years after this decision.

Accordingly, Williams claim based on the failure of Defendant's Dragovich and McGrady to protect his safety and health is barred by Pennsylvania's controlling statute of limitations.

(See Memorandum and order dated Oct 10, 2002 p.g# 6-7)

Therefore, this court Memorandum and order dated February 28, 2003 dismissing ETS ~~claim~~ as indisputably meritless under 28 U.S.C. § 1915(e)(2)(B)(i) should be pulled. on the ground Plaintiff's never argued issue in brief

### Conclusion

on review of the record at this stage. it is clear this Court concluded without evaluating full consideration of Plaintiff's substantial evidence in his favor brief pages 19 thru 24 and Exhibit's H thru J. Reconsideration is appropriate where the Court has made an error not of reasoning but of apprehension. Rohrbach *supra*, 902 F.3d pp. at 527. when it concluded Plaintiff's submits Exhibit G to support his contention that he exhausted his administrative remedies and ~~had no right~~ brie 19-21 (See Memorandum and order dated February 28, 2003, p. 19 # 5)

Plaintiff's relies on Securities and Exchange Com vs Hughes Capital Corp. 124 F.3d 449, 452 (3d Cir 1997) (Citations omitted)

(The court must view all evidence in favor of the non moving party, all claims must be resolved in favor of the non moving party)

Therefore, this court order Feb 28, 2003 should be altered or amended. on failure to exhaust, should have been dismissed. if Court deny motion, exhaust claim should be dismissed without prejudice.

(8) Respectfully submitted James Williams

Date March 14, 2005.

In the United States District Court For the Middle  
District of Pennsylvania

James H. Williams  
(Plaintiff)

Civil No # 1:cv-01-c-280

v/s

Richard L. Spaulde  
(Defendants)

Judge Kane

Certificate of Service for Incarcerated Litigant

I, James H. Williams AY-8672, certify that this document "Concise brief in support of Motion for Reconciliation" was given to prison officials on March 15, 2005 for forwarding to:

Linda S. Lloyd (D.A.G.) #66720  
Office of Attorney General  
Litigation Section  
15th Floor, Strawberry Square  
Harrisburg, Pa. 17120

Office of the Clerk  
U.S. District Court House  
for the Middle District  
228 Walnut St. P.O. Box 283  
Harrisburg, Pa. 17108

I, certify under penalty of perjury that the foregoing is true and correct 28 U.S.C. Sec. 1746

Respectfully submitted  
James H. Williams

James H. Williams  
AY-8672

175 Progress Dr.  
Waynesburg, Pa. 15370

Date March 15, 2005

To: office of the clerk  
U.S. District Ct House  
228 Walnut St. P.O. Box 983  
Harrisburg, Pa. 17108

James Williams  
AY-8692  
175 Progress DR  
Harrisburg, Pa. 17108

March 15, 2005

RE: Williams vs Spade  
Civil No # 1:cv-01-0280

Dear Clerk;

Enclose please find one (1) original and two (2) copies of Plaintiff's concise brief in support of motion for reconsideration with certificate of service attached for filing with your office.

Due date March 17, 2005 Mail box rule apply.

Staff  
Refuse to  
give me  
the stapler

Truly yours  
James Williams

James Williams  
AY 8692  
175 Progress Dr.  
Waynesburg, Pa. 15370



To: Office of the Clerk  
U.S. District Court House  
228 Walnut St. P.O. Box 983  
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